



Department of Justice

FOR IMMEDIATE RELEASE
MONDAY, APRIL 30, 2007
WWW.USDOJ.GOV

AT
(202) 514-2007
TDD (202) 514-1888

DEPARTMENT OF JUSTICE WILL NOT OPPOSE STANDARDS-SETTING ORGANIZATION'S PROPOSAL ON PATENT INFORMATION POLICY

WASHINGTON — The Department of Justice announced today that it will not oppose a proposal by the Institute of Electrical and Electronics Engineers Inc. (IEEE) to implement a policy on the disclosure and licensing of patents in IEEE's standards-setting process. The policy will allow patent holders to commit publicly to specific restrictions on their future licensing terms and conditions for the use of patents that are essential to IEEE standards. The Department said that the proposed policy may enable IEEE to make better informed decisions when formulating standards that will benefit consumers.

The Department's position was stated in a business review letter from Thomas O. Barnett, Assistant Attorney General for the Department's Antitrust Division, to counsel for IEEE and its standards association, IEEE-SA. IEEE is a non-profit association for technology professionals with diverse interests. IEEE-SA, IEEE's standards development organization (SDO), develops and issues standards used in industries such as information technology, power and energy, instrumentation and measurement, mobile and stationary batteries, nanotechnology, organic electronics, telecommunications, and transportation safety.

IEEE requested a business review letter from the Antitrust Division expressing its enforcement intentions regarding a proposed patent policy that will give holders of patents essential to IEEE standards the option of publicly committing to the most restrictive licensing terms they would offer. Under the policy, the patent holder could also choose a number of other options. It could: choose not to provide any licensing information; state that it does not believe its patents are essential to the IEEE standard; state that it will not assert its essential patent claims against implementors of the standard; or commit to license its essential patent claims on reasonable and nondiscriminatory terms. The policy also clarifies that these types of assurances about future patent licenses are irrevocable, and that they are binding on affiliates of the patent holder. IEEE-SA implementation of the patent policy should permit IEEE "standard-setters" to access the relative costs of competing technologies.

In October 2006, the Department issued a business review letter to another standard-setting organization, VMEbus International Trade Association (VITA), in which the Department concluded that mandatory disclosure of a patent holder's most restrictive licensing terms before a standard is set can preserve "the benefits of competition between alternative technologies that exist in the standard-setting process." In the Department's letter to IEEE, Barnett said that IEEE's patent policy "could generate similar benefits as patent holders may compete to offer the most attractive combination of technology and licensing terms." In addition, the increased

information that may become available should improve the decision-making of IEEE standard-setters.

“The requests from VITA and IEEE show that individual SDOs are working to find patent disclosure and licensing policies that will improve the efficiency of their standard-setting activities,” Barnett said. “The antitrust laws permit reasonable efforts to enhance the effectiveness of such beneficial collaborative activities.”

Under the Department’s business review procedure, an organization may submit a proposed action to the Antitrust Division and receive a statement as to whether the Division will challenge the action under the antitrust laws.

A file containing the business review request and the Department’s response may be examined in the Antitrust Documents Group of the Antitrust Division, U.S. Department of Justice, Suite 215, Liberty Place, 325 7th Street NW, Washington, DC 20530. After a 30-day waiting period, the documents supporting the business review will be added to the file, unless a basis for their exclusion for reasons of confidentiality has been established under paragraph 10(c) of the Business Review Procedure, 28 C.F.R. § 50.6.

###

07-303